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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 817

CECIL L. TANSEL, assignee of chose in action from Harris-Intertype Corporation,
Petitioner,

v.

PHOTON, INC.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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TABLE OF CONTENTS

	Page
Opinions of Courts Below	2
Jurisdiction	3
Questions presented	3
Constitutional Provisions and Statutes Involved	4
Statement of Facts	4
Argument	29
Conclusion	33

Table of Citations

Cases

Associated Folding Box Co. v. *Levkoff*, 194 F.2d 252 (CA-1) ... 32
Bryan v. *Sid Richardson, Inc.*, 254 F.2d 191, 193 (CA-5) 31
Calmer, Inc. v. *Cook Chemical Co.*, ... 29
Cuno Engineering Corp. v. *Automatic Devices Corp.*, 314 US 84, 86 L.Ed. 58 ... 29
Fogarty v. *United States*, 236 F.2d 201, 206 (CA-5) ... 31
Great A & P Tea Co. v. *Supermarket Equip.*, 340 U.S. 147 ... 2, 4, 3, 31, 32, 33
Gonzales v. *Landon*, 215 F.2d 955, 957 (CA-9) ... 31
Harris-Intertype Corp. v. *Photon, Inc.*, ... 1, 2, 6
Jones on Evidence, 4th Ed., Vol. 1 pages 452-453 ... 31
McCord Corp. v. *Beacon Auto Radiator Co.*, 193 F.2d 985 (CA-1) ... 32
Pacific Northwest Canning Co. v. *Skookum Packers Association*, 283 US 858, 75 L.Ed. 1464 ... 29
Stedman Mfg. Co. v. *Redman*, 257 F.2d 867, 871-872 (CA-4) ... 31
Tansel v. *Higonnet et al* ... 3
United Shoe Machine Corp. v. *Industrial Shoe Machine Corp.*, 335 F.2d 577, 580 (CA-1) ... 32

Statutes

	Page
28 U.S.C.	
1338	3
1400 (b)	3
1256	5
35 U.S.C.	
120	13

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Your Petitioner, Cecil L. Tansel, prays that a writ of certiorari issue to review and vacate the Judgment (Appendix, page A-2) of the United States Court of Appeals for the First Circuit rendered August 30, 1965, in a cause then styled *Harris-Intertype Corporation* v. *Photon, Inc.*, No. 6482.

Harris-Intertype Corp. was the assignee of two patents granted to Tansel. The District Court for the District of Massachusetts held both patents invalid primarily because certain mechanical switches used in the machine were held to be too inaccurate for commercial success.

The Court of Appeals affirmed on a different ground. It held that the patents could be construed to cover a commercially successful machine, but were invalid for lack of invention by application of the rule of law of *Great A & P Tea Co.* v. *Supermarket Equipment Corp.*, 340 U.S. 147, and cases in the First Circuit applying that rule of law.

This Petition seeks review of only one of the Tansel patents, this being No. 2,896,523 granted July 28, 1959 (R. 577). The application which matured into this patent was twice before the United States Court of Customs & Patent Appeals (215 F.2d 457 and 253 F.2d 241).

There is a conflict between the decision of the Court of Appeals for the First Circuit and the Court of Customs & Patent Appeals. Petitioner asks this Court to resolve this conflict.

After the decision of the Court of Appeals for the First Circuit, the patents in suit and the chose in action were assigned to Tansel, so it is he who brings this Petition. (See Appendix, page A-20)

Opinions of Courts Below

The Opinion of the District Court in the suit for infringement of the Tansel patents in *Harris-Intertype Corp.* v. *Photon, Inc.*, is reported at 235 F.Supp. 921, (D. C. D. Massachusetts) November 30, 1964, and is in the printed record at page 551.[1]

The *per curiam* Opinion of the Court of Appeals for the First Circuit affirming the decision of the District Court was rendered August 30th, 1965. It is reported at 349 F.2d 856, and is in the Appendix to this Petition at page A-1.

The conflicting Opinion of the Court of Customs & Patent

[1] Nine copies of the record as printed for use in the Court of Appeals below are being filed with this Petition. Hence, the District Court's Opinion is not being printed in the Appendix to this Petition.

Appeals is *Tansel* v. *Higonnet et al.* This decision was rendered June 30, 1954. It is reported at 215 F.2d 457 and is in the Appendix to this Petition at page A-6.

Jurisdiction

This is a suit for patent infringement. The suit arises under the laws of the United States,, Title 28, U.S. Code, Sections 1338 and 1400(b).

The jurisdiction of this Court is invoked under Title 28 U.S. Code, Section 1254 and Section 1256.

The date of the Judgment (Appendix, p. A-2) sought to be reviewed is August 30, 1965. It was entered August 30, 1965.

A Petition for Rehearing (Appendix, p. A-3) was filed September 13, 1965. It was denied, without comment, on September 20, 1965 (Appendix, p. A-5).

Questions Presented

1. What is the proper construction of Rule 19, paragraph 2 of the Rules of this Court? Is a showing that there is a conflict between a decision of a United States Court of Appeals and a decision of the United States Court of Customs & Patent Appeals on the same matter sufficient to warrant the granting of a Petition for a Writ of Certiorari under the provisions of Rule 19 of this Court?

2. With respect to the claims (R. 599-603) of Tansel patent 2,896,523 (R. 577), is the Court of Appeals for the First Circuit correct in holding them invalid for lack of invention, or is the Court of Customs & Patent Appeals correct in holding (at 215 F.2d 458 and Appendix, p. A-6) that some of these claims define an invention which is regarded as a fundamental advance in the printing art?